Written Statement of Paul Mitchell
Senior Director and General Manager
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Before the

Subcommittee on Telecommunications and the Internet
Committee on Energy & Commerce
U.S. House of Representatives

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Mr. Chairman, Mr. Markey, and Members of the Subcommittee:

My name is Paul Mitchell, and I am Senior Director and General Manager for the Microsoft TV Division at Microsoft Corporation. I am pleased to appear before the Subcommittee as it works to understand how current Internet technologies are transforming the consumer experience, and as it turns to the critical job of reviewing existing laws and rules in an effort to determine how new ones need to be written so that these new technologies can flourish and consumers can receive and enjoy new and innovative Internet services and products.

We see the emergence of broadband platforms and Internet Protocol (IP) technology as delivering — finally — the long promised convergence of Internet service and products. Ten years ago, at a hearing much like this one, the then-Chairman of this Subcommittee predicted that in the future you will be able to watch your phone, answer your PC, and download your television. These notions are no longer theory. Today, they are a reality. IP services and products today enable the delivery of voice, data, and video in new and innovative ways and represent a transition in how consumers communicate, since it allows consumers at work, at home or on the go to access content, services, and applications through a greater diversity of devices, including PCs, TVs, mobile phones, and handheld devices. We are moving from a time when consumers looked at the Internet as a distinct medium (they looked for information "on the

Internet" or made "Internet calls") to a world where consumers simply make calls, watch TV, and obtain information without realizing that the service they receive is being provided in an IP format.

We are excited about this development because Microsoft offers a variety of Internet products and services that use broadband transport connections to create new and innovative consumer experiences. In our world, Internet or IP services and products generally mean those services and products that ride atop or are connect to broadband transport networks. For example, we provide software used to run the Windows Media Center Edition PC which is available in the market today and enables consumers today to access an analog or digital broadcast video service, an analog multichannel cable video service, photos, music, Internet services, and all the other features of a PC. We are currently in talks with the cable industry to enable the Media Center Edition PC, hopefully in a short timeframe, to access digital cable and interactive services. In the future, we expect the Media Center Edition PC also to enable consumers to access IPTV services. Media Center Extenders and Portable Media Centers allow consumers to enjoy this content and these services throughout the home and on the go. MSN delivers to the computers and wireless phones and handheld devices of consumers a variety of content, including news and entertainment, as well as other services such as downloadable music and video offerings. In addition, consumers can sign up for Hotmail, a free email service, and MSN Messenger, a free instant messaging product. Microsoft Live Meeting enables a group of people in an enterprise environment or other setting to enjoy new options for real-time collaboration, to increase productivity, using Microsoft software and a broadband transport connection. Our Xbox Live Service offers another example of how IP technology can be used to

improve a consumer experience, in this case gaming, by allowing gamers to compete against each other over the Internet and enhancing their gaming experience with a VoIP feature.

In addition to the products just mentioned, my group, Microsoft TV, offers technology solutions to infrastructure providers. We developed Microsoft TV Foundation Edition, currently being deployed by Comcast, which brings advanced guide functionality with digital video recording and a client applications platform to traditional cable networks. We also developed the IPTV products that SBC and Verizon are deploying, which deliver a high-quality interactive video content service to consumers. These products can be deployed over a variety of networks including a broadband telephony, cable, or wireless network. Our IPTV products will offer new interactive features for consumers, and we think consumers will find this a very compelling experience.

We may hear today about VoIP, which is the delivery of voice communication over an IP based platform. VoIP is a technology that can be used in a variety of ways and as such highlights the challenge for policy makers. VoIP encompasses a great range of capabilities — from a feature in a gaming console such as Xbox, to a computer-to-computer communication, to a full blown telephone service that is capable of interconnecting with the PSTN. Even Internet radio programs are, in some sense, VoIP services. As Congress considers the appropriate regulatory treatment for those VoIP services that consumers use or that are offered as a substitute for their traditional phone services — what I will call a VoIP Telephony service — it must ensure that other VoIP services or features are not swept inadvertently into the mix. No one sees the VoIP feature that can be used with our Xbox Live gaming service as a substitute for your landline phone. The Xbox Live VoIP feature does not use telephone numbers, cannot be used in conjunction with a phone, cannot connect to the PSTN, can only be used if you have an Xbox

game console, and users are identified solely by their gamer tags and not their names. In short, the Xbox Live VoIP feature is simply too limited to be of use to consumers outside the gaming experience. Essentially, you are not going to give up your regular phone connection to the PSTN just because you have an Xbox.

The Subcommittee will hear today about tremendous innovations which result from billions of dollars of investments by Microsoft and other high tech companies as well as upgrades by the network transport providers represented here today. The investments in innovative software, devices, services, and applications are, in fact, major drivers of the tremendous investments being made in network capacity. As Congress has indicated, policy makers should avoid any action that slows, disrupts, or distorts that innovation. This suggests Congress should proceed cautiously before creating new rules and avoid expanding the scope of regulation unless and until it is demonstrably needed.

Indeed, in writing the Telecommunications Act of 1996, this Subcommittee recognized that an overarching policy goal is to preserve the vibrant Internet marketplace unfettered by unnecessary regulation, in order to encourage innovation, create jobs, and stimulate the economy. That principle, embodied in Section 230(b) of the Communications Act, is a testament to the vision of the Members of this Subcommittee, who stated ten years ago that, "It is the policy of the United States . . . to promote the continued development of the Internet . . .; [and] to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation . . . ."

We believe that this overarching policy statement has served our nation well over the past ten years, and we think that policy remains sound today. The hard questions come when Congress moves beyond this policy statement, which we think Congress should reaffirm in any

new legislation, to specific provisions of existing law and how new technologies fit, or don't fit, into those legal schemes. Because Microsoft provides products and services that rely on broadband connections, but does not operate broadband transport networks, we sit in a different place than many other companies testifying today. Consequently, we do not have answers to all of the important questions facing network operators and this Subcommittee as communications networks migrate to the widespread use of IP technology. But we do come to this debate with certain core principles and want to share them with you today:

1. Internet services and products should remain largely unregulated.

Internet services, that is, those services and products that ride atop or connect to the underlying broadband transport services, should remain largely unregulated and not be subject to the Communications Act. The success of the Internet as a tool for consumers and business has been remarkable, and Congress should proceed carefully so it does not inadvertently disturb this accomplishment. The choice of content and services available over the Internet overwhelms all of us, and that stands out as a huge accomplishment of this medium. Thus, Congress should ask whether any proposed law or regulation that touches upon this tremendous variety of Internet services and products is necessary for the public good. No question that our information technology and communications networks are changing rapidly, but it is wise for this Subcommittee to pause and ask whether the evolution of technology requires an expansion of our laws into new realms.

2. Consumers should be able to access any site and use any lawful application or device with a broadband connection — just as they have been able to do in the narrowband world.

At a speech last fall, Chairman Powell stated that as we continue to promote competition among high-speed platforms, "we must preserve the freedom of use broadband consumers have

come to expect." He then went on to challenge the broadband network industry to preserve what he called "Internet Freedoms." Specifically, these are:

- *Freedom to Access Content.* First, consumers should have access to their choice of legal content.
- *Freedom to Use Applications.* Second, consumers should be able to run applications of their choice.
- *Freedom to Attach Personal Devices.* Third, consumers should be permitted to attach any devices they choose to the connection in their homes.
- *Freedom to Obtain Service Plan Information*. Fourth, consumers should receive meaningful information regarding their service plans.[1]

We see these consumer freedoms as fundamental to the success of the Internet. Those freedoms, which have been at the core of the telecommunications world for the past three decades or longer, shaped the dial-up Internet world, and we firmly believe these principles should be carried forward to the broadband future.

As a Commerce Department study found, availability of value-added businesses and consumer applications at competitive prices is a key demand-side driver of broadband.[2] Preserving an environment for innovation and competition among services and devices that connect to broadband networks will, in turn, encourage further investments in these networks. Thus, we hope that everyone at this table and this Subcommittee agree that these consumer freedoms must continue to hold true for the Internet to succeed.

[1] Michael Powell, Remarks at the Voice on the Net Conference (Oct. 19, 2004) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253325A1.pdf).
[2] Department of Commerce, Office of Technology Policy, *Understanding Broadband Demand: A Review of Critical Issues*, at 14-17 (Sept. 22, 2003).

3. If policy makers act, they should maintain a "light touch" and act only with respect to those services that give rise to present day policy questions.

Since passage of the Telecommunications Act of 1996, the FCC and this Subcommittee have stayed the course on the principle that the Internet services should be unregulated or at most lightly regulated. We firmly believe that this regulatory "light touch" approach triggered the explosion of new services and applications that has fuelled the Internet economy that we have today. Rapid change and technological advancement in the IP services market mean that it is exceedingly difficult for government regulations to keep pace with technological advances in the IP marketplace. That reality counsels caution in expanding the scope of regulation or in writing overly prescriptive rules.

In order to avoid constraining the continued growth of IP services, any regulation imposed on IP services should focus on objectives, not means, and should allow implementers flexibility in how to technically meet those objectives. For example, policymakers should retain as a policy objective that consumers should be able to obtain, at retail, a variety of innovative devices for accessing IP services over a broadband connection, while allowing industry and appropriate standards bodies to develop the solutions for connectivity of such devices.

An area which this Committee may consider is how these new services may affect the existing telecommunications infrastructure and the support systems, such as universal service, that accomplish important social goals. The local telephone network is currently subsidized through massive implicit subsidies as well as explicit subsidies which involve telecommunications carriers making payments into the universal service fund. Plainly, the system that finances the universal service fund is under strain today, because it is funded by interstate telecom revenues, and demand for subsidy payments is growing at the same time that those revenues are shrinking. Thus, we encourage the Subcommittee to consider alternative

means, such as assessing a universal service fee on telephone numbers if you want to fund the telephone service or assessing it based on connections if you want to fund the underlying infrastructure. In addition, the existing system for compensating telecommunications carriers that exchange traffic is deeply flawed and has been the subject of reform efforts for years. Those efforts should come to conclusion and the system should be fixed before it is applied to IP services, or else innovation will suffer.

This example illustrates an important point: Old rules will not map neatly to the unfolding world of Internet services and will hold back innovation. The transformative nature of IP services, including IP transport services, means that existing regulatory or legislative concepts, some of which have not been reconfigured in seven decades, should not be applied without first analyzing whether the legacy rule still benefits the public in the broadband world.

Regardless of the legislative approach this Committee takes, we think it is instructive to learn from the FCC's light touch in developing a policy toward the Internet over the past ten years. We also believe that the existence of certain core consumer safeguards provide key signals to all those who use the Internet — network operators, content developers, consumer equipment manufacturers, software developers, and consumers — that their investment will be protected and that their innovation may be rewarded. Any legislative drafting must be done carefully so as not to overreach, and we hope to work with the Committee to clarify the scope of any legislation.

4. Where subject to regulation, Internet services should be subject exclusively to Federal jurisdiction.

Lastly, Congress should protect IP services from conflicting and overlapping State regulation. IP services are used as an integral part of interstate commerce, they utilize interstate or global networks, and they generally require the transmission of bits across state lines. As a

consequence, where subject to regulation, they should be exclusively within Federal jurisdiction. The FCC has correctly decided that VoIP is an interstate service, and that conclusion should apply to other IP services that are subjected to regulatory treatment. Accordingly, where this Committee subjects an IP service to the Communications Act, it should make clear that the IP service is subject only to Federal jurisdiction.

* * *

In conclusion, IP services are beginning to deliver to consumers a world of content and communications that will dramatically improve economic and social welfare. Investment and innovation in these services thrives in an environment in which these services are unregulated or lightly regulated, and where certain core principles regarding the freedom of use that broadband transport customers have come to expect are preserved. To the extent IP services have to be regulated, if at all, it should be done exclusively at the Federal level, and only then to the degree necessary to achieve core government interests that the marketplace cannot solve.